

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

ANDREW FULLMAN : CIVIL CASE
 :
Plaintiff(s), : Case No. 2:17-cv-02673-ER
 :
v. : Philadelphia, Pennsylvania
 : July 31, 2019
CITY OF PHILADELPHIA et al : Time 10:07 a.m. to 10:30 a.m.
 :
Defendant(s), :
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TRANSCRIPT OF STATUS AND SCHEDULING CONFERENCE
BEFORE THE HONORABLE EDUARDO C. ROBRENO
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiff(s): Andrew Fullman
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For Defendant Name: Jeffrey Mozdziok
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Court Recorder: Kenneth E. Duvak
Clerk's Office
U.S. District Court

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1 (Proceedings started at 10:07 a.m.)

2 DEPUTY CLERK KENNETH DUVAK: All rise. United
3 States District Court for the Eastern District of
4 Pennsylvania is now in session. The Honorable Eduardo C.
5 Robreno presiding.

6 JUDGE EDUARDO C. ROBRENO: Good morning. Please
7 be seated.

8 COUNSEL JONATHAN COOPER: Good morning, Your
9 Honor.

10 ANDREW FULLMAN: Good morning, Your Honor.

11 THE COURT: We are here today status and
12 scheduling conference and we have -- Mr. Fullman has asked
13 for additional time and find out what is going on with
14 this with this case. So, let me, let me ask Mr. Cooper,
15 what's the, what's the status of the case right now?

16 MR. COOPER: Your Honor, currently discovery has
17 closed. Motions for summary judgement have been filed on
18 behalf of all defendants and as Your Honor noted, Mr.
19 Fullman has requested more time to respond and that's
20 pretty much where we stand. At this point I think that
21 the motions are at least -- are -- have merit and I think
22 that --

23 THE COURT: Okay --

24 MR. COOPER: -- we'll just wait for everyone.

25 THE COURT: So, so, who is left as a defendant in

1 this case?

2 MR. COOPER: For the City it's Commissioner Ross
3 and the City itself, nobody else.

4 JEFFREY MOZDZIOCK: And for the Attorney Gen --
5 Jeff Mozdziok for the Attorney General's Office. We've
6 got Eileen Bonner, a Gun Ta- Violence Task Force Agent
7 with the Office of Attorney General.

8 THE COURT: Okay, so there is, uh, one individual
9 for Bonner and then there are, there's the City on a
10 Monell claim and, uh, Commissioner Ross on his individual
11 capacity -- is, is not a Monell claim?

12 MR. COOPER: That's (indiscernible).

13 THE COURT: You said he somehow participated in
14 this event.

15 MR. COOPER: Correct, Your Honor. That's my
16 understanding from the pleadings.

17 THE COURT: Okay. Now -- okay. So Mr. Fullman
18 what's, what's, what's going on with you?

19 MR. FULLMAN: Well, Your Honor, the discovery we
20 were stayed. I've never got a chance to do anything, so I
21 don't think it should be closed.

22 THE COURT: Okay, so what would you like to do?

23 MR. FULLMAN: I would like to do interrogatories
24 and request for documents and things. And I would like to
25 reserve a deposition too.

1 THE COURT: A deposition of whom?

2 MR. FULLMAN: Both Defendants.

3 THE COURT: You mean Bonner and Commissioner
4 Ross?

5 MR. FULLMAN: Yes.

6 THE COURT: Okay. Do you have any reason to
7 believe that Commissioner Ross -- well, let me ask you
8 this. You never interacted with Commissioner Ross, is
9 that right?

10 MR. FULLMAN: Only by mail.

11 THE COURT: Okay. But, in the event at issue
12 here, that is with -- by the way, the other Fullman, is he
13 related to you? Is it Mark Fullman?

14 MR. FULLMAN: Yes.

15 THE COURT: Who is he?

16 MR. FULLMAN: That's my nephew.

17 THE COURT: That's your nephew, okay. In the
18 events here I'm trying to find out whether Mr. --
19 Commissioner Ross interacted with you as the result of
20 your calling upon him in his role as a Commissioner,
21 whether he was involved in any of these events personally.

22 MR. FULLMAN: He was called.

23 THE COURT: He was called by you? He was called
24 when?

25 MR. FULLMAN: By letter, yes. I communicated

1 with him by letter.

2 THE COURT: Okay.

3 MR. FULLMAN: And his representatives were really
4 the ones that --

5 THE COURT: Who was that I'm sorry?

6 MR. FULLMAN: His representatives --

7 THE COURT: Oh.

8 MR. FULLMAN: -- the people that work for him.

9 THE COURT: Okay, who was that?

10 MR. FULLMAN: I don't have their names with me
11 right now.

12 THE COURT: Okay. Okay. Okay, so, let's see
13 here. Thank you, uh, Mr. Fullman. Let me, let me ask the
14 Defendants -- okay, so, we'll start with Bonner's motion
15 for summary judgement. Eleventh amendment immunity in
16 personal capacity meaning what?

17 MR. MOZDZIOCK: The individual capacity, there's
18 no claim against her. The -- he claims that she
19 retaliated against him but the retaliatory action took
20 place before the protected activity. He says --

21 THE COURT: Okay, give me a date for that.

22 MR. MOZDZIOCK: I don't have the date that he
23 spoke to -- so, the -- on July 25, 2016 Mr. Fullman was
24 told that he was aware that the police -- that he had
25 given a statement to the police. Afterwards, he filed

1 complaints with the Internal Affairs --

2 THE COURT: Well what are the --

3 MR. MOZDZIOCK: -- Division against Bonner.

4 THE COURT: -- dates? You're saying no, this
5 occurred in certain chronology. So, what, what are the
6 dates of that?

7 MR. MOZDZIOCK: Well, so, prior -- the things
8 that he's complaining about to Internal Affairs took place
9 sometime before July 25, 2016.

10 THE COURT: What is it, what is it that took
11 place before July 25th?

12 MR. MOZDZIOCK: That his, that it was the Hakeem
13 Harman (ph) and Mark Fullman were made aware that the
14 Plaintiff had given statements to the police. So, he says
15 that, sh- Bonner gave them that in retaliation.

16 THE COURT: And, did Bonner --

17 MR. MOZDZIOCK: But it is retalia- he says it's
18 retaliation for the Internal Affairs complaints, which
19 took place afterwards, which were about her giving the
20 statements. So, it could not have been in retaliation
21 because --

22 MR. FULLMAN: Your Honor, he's mixing the facts
23 up.

24 THE COURT: He jus' -- hold it minute. Give me
25 your facts with dates.

1 MR. MOZDZIOCK: Okay. On July 25, 2016, Thomas
2 Fullman told the Plaintiff that Hakeem Harman and Mark
3 Fullman were aware the Plaintiff had given the police a
4 statement regarding the shootings. After he learned about
5 the disclosure of the statement, Plaintiff filed
6 complaints with the Philadelphia Police Department
7 Internal Affairs Division against Bonner. The Plaintiff
8 spoke to Bonner about the disclosure and she said it --
9 she believed it came from the police department. He had
10 spoken to her about the May 6th and August 19th shootings,
11 sometime in 2014.

12 THE COURT: Okay, I, I, I don't follow that
13 frankly but. Okay. Okay, what about that Fullman has no
14 liberty interest at state?

15 MR. MOZDZIOCK: So, the, the Court has recognized
16 the right of privacy but they have not done it in this
17 matter. He never signed a confidential informant
18 agreement. There's no right to adequate police
19 protection. He was never harmed and he ju- he merely
20 suffered reputational harm with his family. And, in Paul
21 vs Davis (ph), you know, the harm or injury to the
22 interest and reputation alone does not result in the
23 depri- deprivation of any liberty or property interest
24 recognized by state or federal law.

25 THE COURT: What -- even if the facts turned out

1 to be as Mr. Fullman, as I understand he is claiming, that
2 the statement was released.

3 MR. MOZDZIOCK: Mm-hm.

4 THE COURT: That he had cooperated -- what he had
5 said, was released in retaliation for he's having filed
6 certain complaints. Would that state a cause of action?

7 MR. MOZDZIOCK: Well, no because the complaints
8 that he made were about the disclosure.

9 THE COURT: Mm-hm.

10 MR. MOZDZIOCK: Which happened beforehand, so it
11 can't -- the timeline cannot follow. He would've had to -
12 - there would've had to been an action by Bonner after he
13 made complaints to the Internal Affairs Division but the
14 disclosure actually took place beforehand.

15 THE COURT: Okay. Okay. So, there would be no
16 liberty interest in protecting a witness from having his
17 or her statement released --

18 MR. MOZDZIOCK: Well --

19 THE COURT: Is, is that because there was no
20 commitment on the part of the police to maintain it
21 confidential, I think that's, you're suggesting --

22 MR. MOZDZIOCK: Well, there's, there, there's no
23 confidential witness agreement and also the disclosure of
24 the witness to the -- those accused of crimes is not
25 arbitrary it is required by the sixth amendment.

1 THE COURT: Mm-hm.

2 MR. MOZDZIOCK: So, it'd be in opposite to say
3 that the -- that the police would be in a place where no
4 matter what they do, they violate --

5 THE COURT: Yeah.

6 MR. MOZDZIOCK: -- the, the rights of one those.

7 THE COURT: Well, let me ask you this, were the
8 disclosures made in connection with a criminal prosecution
9 of the individuals who have been alleged to have
10 commitment this crime?

11 MR. MOZDZIOCK: Yes, they were made during
12 discovery --

13 THE COURT: Okay.

14 MR. MOZDZIOCK: -- according to the
15 (indiscernible).

16 THE COURT: So, what happened was the defendants
17 were indicted and, and the poli- and the DA then released
18 the statements?

19 MR. MOZDZIOCK: I don't know if there was an
20 actual indictment but --

21 THE COURT: Okay.

22 MR. MOZDZIOCK: -- the, the Assistant District
23 Attorney, I believe, is the one who released the
24 statements.

25 THE COURT: Okay.

1 MR. MOZDZIOCK: Not, not, not my Defendant.

2 THE COURT: But, did the, the, the prosecutor
3 would have no obligation to release, where we make all
4 the, you know, Brady or Giglio sort of material until a
5 person is accused of a crime, right? Not during an
6 investigation.

7 MR. MOZDZIOCK: Well, I, I don't, I don't know
8 the exact time table --

9 THE COURT: Yeah.

10 MR. MOZDZIOCK: -- of the disclosure.

11 THE COURT: But these individuals were never
12 charged?

13 MR. MOZDZIOCK: Not to my knowledge.

14 THE COURT: Okay, okay. So, you're saying the,
15 the factual chronology, accepting them as true in the
16 complaint, cannot stand up because it, it's contradictory
17 --

18 MR. MOZDZIOCK: Correct.

19 THE COURT: -- and, number two, there is no
20 liberty interest in what occurred here, even if it is
21 true?

22 MR. MOZDZIOCK: Correct.

23 THE COURT: Okay. And, then we've got 11th
24 amendment immunity and, individual capacity. What, what
25 does that mean, what are you saying about -- oh Bonner did

1 not participate in anything here?

2 MR. MOZDZIOCK: Bonner was a state employee --

3 THE COURT: Right.

4 MR. MOZDZIOCK: -- so, in her official capacity,
5 she cannot be sued for damages.

6 THE COURT: Right.

7 MR. MOZDZIOCK: She'd probably be sued for
8 injunctive relief.

9 THE COURT: Right.

10 MR. MOZDZIOCK: So --

11 THE COURT: In her official capacity.

12 MR. MOZDZIOCK: In her official capacity.

13 THE COURT: Okay, but she could be in her
14 individual capacity?

15 MR. MOZDZIOCK: Correct.

16 THE COURT: And, what is, what is her defense to
17 that?

18 MR. MOZDZIOCK: In to the individual capacity?

19 THE COURT: Yes.

20 MR. MOZDZIOCK: It is that she could not have
21 violated the first amendment by retaliating against him
22 because of the chronology.

23 THE COURT: Okay.

24 MR. MOZDZIOCK: And, two, that there's no liberty
25 interest.

1 THE COURT: Okay, good. Okay, let me hear Mr.
2 Cooper. What about, the City?

3 MR. COOPER: Yes, Your Honor. First and
4 foremost, the City has been, with respect to the City, the
5 City has been sued under a Monell theory which requires
6 some sort of evidence of a policy practice or custom
7 exhibiting the liberty difference to the rights of, of
8 plaintiff or similarly situated persons. There is no
9 record evidence whatsoever. Mr. Fullman's complaint
10 actually alleges, and I believe his testimony, that the
11 individual police officers in this case, who have never
12 been identified, did not adhere to Philadelphia Police
13 Department policies and protocols. That's actually the
14 opposite of a Monell claim, it doesn't get you there.
15 That would only go to a claim against the individual
16 officers but no individual officer has been identified.

17 THE COURT: Yeah, I think there was an allegation
18 that it violated, release of the information, violated
19 the, the, the policy of the, of the police department.

20 MR. COOPER: That's Mr. Fullman's allegation.

21 THE COURT: Yeah.

22 MR. COOPER: Correct.

23 THE COURT: Okay.

24 MR. COOPER: But that, even if it vi- something
25 that violates policy is not a Monell claim.

1 THE COURT: Yeah.

2 MR. COOPER: That would be a claim against the
3 individual officer who's never been identified and, and
4 Mr. Fullman has made no efforts to identify. So that, as,
5 as blanket with the City. With respect to, the, the
6 substance of claims, they each have been fails on the
7 merits as well and, and I echo the Counsel for the
8 Attorney General as with respect to due process claims,
9 municipalities and their employees have no blanket
10 obligation to provide individuals with police protection
11 and, again, that -- well that only exists when there is a
12 special relationship between the individual and the
13 municipality which is typically only found when that
14 person is in custody or somehow has had their liberty
15 otherwise restrained by the municipality.

16 THE COURT: Well, contractually, I suppose.

17 MR. COOPER: Cert- fair point, Your Honor, yes.

18 THE COURT: Yes. It could be an agreement of
19 some sort to be placed in a witness protection or to have
20 some particular protection assigned to that.

21 MR. COOPER: Absolutely, and that's -- none of
22 that is the case here.

23 THE COURT: Yeah.

24 MR. COOPER: And, the Third Circuit has also said
25 that as, as to echo Counsel, the information contained in

1 a police report is not protected by the confidentiality
2 branch of the constitutional right of privacy. That was a
3 1991, Third Circuit case Sheetz vs The Morning Call, Inc.
4 (ph) and, again, here there was no confidentiality
5 agreement to supersede that control in the law. And, just
6 factually, Plaintiff was not a victim of either one of
7 these, these alleged shootings and he hasn't actually
8 articulated any harm as a, as a, for that offense.

9 THE COURT: But he's been confronted.

10 MR. COOPER: He'd been confronted and, again,
11 just in terms of the timeline, he was confronted before he
12 made complaints to the Philadelphia Police Department
13 about, about the situation and therefore, with respect to
14 retaliation --

15 THE COURT: Well, that wouldn't be retaliation.
16 Well, wouldn't that then be, implicate due process, equal
17 protection or some other constitutional right?

18 MR. COOPER: If, with respect to due process,
19 the, the threat itself, I don't think that actually would
20 go to a due process claim. I think that -- I'm not --
21 there might be a cause of action for that. Harassment's
22 not a cause of action either. If there was a colorable
23 cause of action against an individual, maybe there'd be
24 something there but it's certainly not a claim against the
25 City and, again, no individual here has been identified

1 and a threat alone Mr. Fullman hasn't plead any cause of
2 action that, that would implicate that as, as a, as, a
3 basis for liability. And, I will al- and I'll also say
4 with respect to equal protection, the Plaintiff has not
5 presented -- has not enthused any evidence of similarly
6 situated persons, either within or outside of the
7 protected class, his protected class --

8 THE COURT: Okay.

9 MR. COOPER: -- that, so to either proceed under
10 a class of one theory or under, just a general
11 discriminative -- discriminatory effect and discriminatory
12 purpose theory.

13 THE COURT: Okay.

14 MR. COOPER: And, then with respect to
15 retaliation, again, I think that that fails for the same
16 reasons of Counsel for the Attorney General articulated
17 primarily the timeline and then with respect to
18 Commissioner Ross, as I just mentioned earlier, there's no
19 personal involvement in this case. The only record
20 evidence whatsoever is that Mr. Fullman sent two letters
21 to the Philadelphia Police Department, which were
22 addressed -- they may've been sub headed Commissioner
23 Ross, but there's no record of evidence nor is there any
24 plausible suggestion that Commissioner Ross himself read
25 those letters, took any actions whatsoever, was even aware

1 of the situation at any time and the Plaintiff himself I
2 believe just, just stated that it was Commissioner Ross's
3 representatives who have received that letter and, and
4 taken any of those actions. So, there, there's no,
5 there's no --

6 THE COURT: Okay.

7 MR. COOPER: -- actionable theory against
8 Commissioner Ross.

9 THE COURT: Thank you.

10 MR. COOPER: Thank you, Your Honor.

11 THE COURT: So, Mr. Fullman, tell me your version
12 of the events here. Your version of events.

13 MR. FULLMAN: What he --

14 THE COURT: Otherwise, you were disputing the
15 chronology. What's your chronology?

16 MR. FULLMAN: Well, I hope I can get it together.
17 Agent Bonner came to my residence, picked me up and took
18 me up to get, to give a statement about the two shootings
19 and she told me that this is between you and me, it won't
20 get out. 'Cause I -- that's -- I was concerned about
21 that. And, as -- a couple months later, that's when my
22 nephew said so you gave a statement against Hakeem --
23 Harman and he had, he had all the facts of the statement,
24 which means they saw the statement.

25 THE COURT: Okay, so what, what happened

1 afterwards?

2 MR. FULLMAN: I was threatened, I had to move from
3 my residence, you know, for fear of my life. My family
4 was broken up behind me. It's, it's very dysfunctional
5 now.

6 THE COURT: Now, why do you believe or claim that
7 Bonner released the statement to other parties? If she
8 had, according to you, said this will not get out. What,
9 what was, what was the reason? I think you are alleging
10 some kind of retaliation, so what was she retaliating
11 against?

12 MR. FULLMAN: I -- 'cause I made several phone
13 calls to her and I don't think she was too happy about the
14 -- about my conversations and then the next thing you
15 know, she's -- some of my nephew's friends tell me that
16 they saw the statement.

17 THE COURT: Right. But then you file an action
18 after that. You filed the action with the police
19 department, with Internal Affairs, right?

20 MR. FULLMAN: Yes.

21 THE COURT: Okay. So, what they are saying is
22 that the release of the information would not have been in
23 retaliation for your filing of the Internal Affairs
24 statement because by the time you filed the Internal
25 Affairs statements the statement had already been

1 released.

2 MR. FULLMAN: I don't have the, the, the exact
3 order with me now --

4 THE COURT: Okay.

5 MR. FULLMAN: -- but, it's in my complaint.

6 THE COURT: Okay. I will, I will follow that.
7 Okay. Now, uh, let me see. I have your complaint here.
8 Okay, now what -- you say you wanted to serve
9 interrogatories and you want to request for production of
10 documents and you wanted to take a deposition of Bonner
11 and a deposition of Ross?

12 MR. FULLMAN: Yes.

13 THE COURT: Okay. This is what I'd like you to
14 do. I am going to give you 30 days to file a response to
15 the motion for summary judgement and in that response I
16 want you to attached a copy of the interrogatories and the
17 request for documents and the request to depose Bonner and
18 Ross. I want you to tell me how that information is
19 necessary for you to file a fuller response. In other
20 words, we've got to be able to determine that the requests
21 that you're making are going to be relevant to the issues.
22 For example, 11th amendment, most of these issues it seems
23 to be are issues of law because accepting your version of
24 the facts I don't think there is really a lot of
25 controversy as to those, those facts. So, I've gotta be

1 able to determine whether the discovery request that
2 you're making are relevant to these, to these issues. It
3 may be, it may not be. So, I'd like you to, and you've
4 been around this track before. Compose your response to
5 the motion for summary judgments as it now stands and
6 then add to that your request to -- for interrogatories
7 and requests for documents and for the depositions that
8 you would like to have. I'll look at it and if I believe
9 that the discovery is going to be relevant to the issues,
10 then I'll grant you that -- those requests and then we'll
11 go from there. But, if they have nothing to do with the
12 issues and it would not be efficient or effective or
13 frankly a waste of time then I will deny those. But I
14 want to give you an opportunity to present to me what it
15 is that you would like to and that you need to, in order
16 to be -- to present an effective response. So --

17 MR. FULLMAN: I think --

18 THE COURT: -- you understand that?

19 MR. FULLMAN: Yes, I believe some of my
20 interrogatories and documents are, is already part of the
21 court record.

22 THE COURT: Okay, well do them again so I'll have
23 more than one point. You file your response and they'll
24 be, your response as things stand now and then you also
25 will put in -- I also need this information in order to

1 supplement or explain my response. You follow that?

2 MR. FULLMAN: Yes.

3 THE COURT: Thirty days enough?

4 MR. FULLMAN: Yes.

5 THE COURT: Okay. We'll follow up proceed from
6 there. Good, thank you.

7 COUNSELS: Thank you, Your Honor.

8 (Court adjourned at 10:30 a.m.)

CERTIFICATE

I, Stephanie Garcia, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in blue ink, appearing to read 'Stephanie Garcia', with a stylized flourish at the end.

September 17, 2019